No. 12941

# United States
# Court of Appeals
for the Ninth Circuit.

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FEDERAL POWER COMMISSION,

Appellant,

vs.

ARIZONA EDISON COMPANY, INC.,

Appellee.

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# Transcript of Record

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**Appeal from the United States District Court,
District of Arizona.**

FILED
AUG - 2 1951
CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]


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In the United States District Court
for the District of Arizona

Civil Action No. 1528 Phoenix

FEDERAL POWER COMMISSION,
Plaintiff,

vs

ARIZONA EDISON COMPANY, INC.,
Defendant.

## COMPLAINT

1. It appears to the Plaintiff, the Federal Power Commission (hereinafter sometimes referred to as the Commission), that Defendant, Arizona Edison Company, Inc., is engaged and about to engage in acts or practices which constitute and will constitute violations of a Commission order duly issued, under the provisions of the Federal Power Act and particularly Sections 203, 301 and 309 thereof (16 U.S.C. §§ 824b, 825 and 825h), on March 31, 1950, In the Matter of Arizona Edison Company, Inc., Docket No. E-6194. The Commission brings this action to enjoin such acts and practices and for an order by this Court commanding the Defendant Arizona Edison Company, Inc., to comply with the requirements of that Commission order. A copy of the Commission order, and Opinion No. 190 which is a part thereof, is attached hereto as Exhibit A, p. 9, infra.

2. This action arises under Sections 314(a), 314(b) and 317 of the Federal Power Act (16 U.S.C. §§ 825m(a), 825m(b), 825p).

3. Plaintiff Federal Power Commission was created and established as provided in Section 1 of the Federal Power Act (16 U.S.C. § 729) and is vested with duties and powers as provided in that Act, inter alia.

4. Defendant is an Arizona corporation, doing business in the State and District of Arizona, having its principal office in the City of Phoenix, in that District, and is an inhabitant of that District. Defendant also is engaged in and about to engage in some or all of the acts or practices complained of herein in that District.

5. The Commission order of March 31, 1950, referred to in paragraph 1, above, was entered in a proceeding initiated by Commission order issued under the provisions of the Federal Power Act, particularly Sections 203, 301, and 309 thereof (16 U.S.C. §§824b, 825 and 825h), on February 16, 1949, directing Defendant to show cause, in writing under oath, why it should not be held to be a "public utility" as that term is defined in the Federal Power Act (16 U.S.C. §§ 791a, et seq.); why it should not be required to comply with the provisions of that Act and the rules and regulations promulgated thereunder applicable to such public utilities; and why it should not be required, accountingwise, to dispose, by charge to earned surplus, of the excess over depreciated book cost of the purchase price paid by Defendant in a certain acquisition of electric utility properties from California Electric Power Company. A copy of that order is attached hereto as Exhibit B, p. 32, infra.

6. Prior to initiation of the proceeding referred to in paragraph 5, above, California Electric Power Company had applied for Commission authorization for that sale of electric utility properties to Defendant, and the Commission had issued an order on February 24, 1948, setting a hearing on that application and requiring Defendant to show cause why the Commission should not find that upon consummation of the purchase Defendant would become and be a public utility within the meaning of the Federal Power Act and subject to regulations as such thereunder. A copy of that order is attached hereto as Exhibit C, p. 34, infra. To secure Commission authorization of the sale without the delay incident to such hearing and determination of jurisdiction over Defendant, Defendant filed a written statement dated March 10, 1948, regarding postponement of such determination. A copy of that statement is attached hereto as Exhibit D, p. 36, infra. By that statement Defendant agreed if as a result of a subsequent separate and lawful proceeding it should be established that Defendant is subject to the jurisdiction of the Commission, approval of the sale would be without prejudice to the Commission to require such accounting for the purchase as the Commission might have lawfully required at the time of the approval of such sale. Defendant therein further undertook upon consummation of such purchase and for a period of two years thereafter to restrict an amount of $500,000 of its earned surplus against any declaration of dividends.

7. Upon consideration of that statement, inter alia, the Commission vacated its order of February 24, 1948, and authorized the sale, by order issued March 11, 1948. A copy of that order is attached hereto as Exhibit E, p. 37, infra. California Electric Power Company, in compliance with the Commission's Rules and Regulations and paragraph (D) of the order of March 11, 1948 (Exhibit E, p. 39, infra), duly reported that the sale and purchase were consummated on April 1, 1948. A copy of that report is attached hereto as Exhibit F, p. 40, infra. The Commission's order of March 31, 1950 (Exhibit A, p. 25, infra), in which it found that it has jurisdiction over the Defendant as a public utility and required certain accounting in relation to the purchase, was issued within the two-year period following the purchase on April 1, 1948, for which Defendant had agreed (Exhibit D, p. 36, infra), to restrict a part of its earned surplus.

8. After authorizing the sale by California Electric Power Company to Defendant the Commission caused members of its staff to make a field investigation of the Defendant's facilities and operations for the purpose of determining the facts relevant to the jurisdiction of the Commission over Defendant as a "public utility" within the meaning of the Act. By and with the Commission's show cause order of February 16, 1949 (Exhibit B, p. 33, infra), referred to in paragraph 5, above, a copy of the report of that investigation was served on Defendant. Service was made on Defendant and re-

ceipt thereof was acknowledged as set forth in paragraph 16, hereof.

9. By letter dated March 28, 1949, Defendant's general counsel stated that in his opinion the Commission did not have jurisdiction over Defendant; that he had so advised Defendant; and that, acting upon this advice, Defendant would not make any response to the Commission's order of February 16, 1949, or enter any appearance in the proceeding initiated by that order. A copy of that letter is attached hereto as Exhibit G, p. 41, infra.

10. On April 21, 1949, the Commission issued an order setting a public hearing to commence June 6, 1949, in the proceeding initiated by the order of February 16, 1949 (referred to in paragraph 5, above). By order issued June 1, 1949, the hour and place of the hearing were fixed and the proceeding was consolidated with another proceeding entitled In the Matter of Central Arizona Light and Power Company, Docket No. E-6212. The orders of April 21 and June 1, copies of which are attached as Exhibits H, and I, respectively (pp. 42, 43, infra), were served on Defendant and receipt thereof was acknowledged, as set forth in paragraph 16, hereof.

11. Public hearing was held pursuant to the orders referred to in paragraph 10, above, before a Presiding Trial Examiner. At the hearing the Commission's staff introduced oral testimony and exhibits. Defendants did not appear or participate in the hearing.

12. On September 22, 1949, the Presiding Trial

Examiner issued his intermediate decision, in accordance with the Commission's rules, wherein he found Defendant to be a "public utility" within the meaning of that term as used in the Federal Power Act and directed Defendant to comply with the provisions of that Act, and the rules and regulations promulgated thereunder (including the Uniform System of Accounts), applicable to "public utilities"; to file certain specific accounting data; and accountingwise to dispose of the excess of acquisition cost over original cost arising in the acquisition of electric utility properties from California Electric Power Company. The Presiding Trial Examiner's decision was served on Defendant and receipt thereof was acknowledged as set forth in paragraph 16, hereof.

13. Counsel for the Commission's staff on October 12, 1949, filed exceptions to the Presiding Trial Examiner's decision on two points. A copy of the exceptions were served on Defendant and receipt thereof was duly acknowledged as set forth in paragraph 16, hereof. On March 31, 1950, the Commission, in accordance with its rules, duly issued a final decision in the proceeding, consisting of Opinion No. 190 and order of that date, referred to in paragraph 1, above (Exhibit A, p. 9, infra). That decision was served on Defendant and receipt thereof acknowledged as set forth in paragraph 16, hereof.

14. The Commission in its decision, referred to in paragraph 13, above, on the basis of the evidence in the record, found and determined that Defendant owns and operates facilities for the transmission of

electric energy in interstate commerce, which facilities are in addition to and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce or facilities for the transmission of electric energy consumed wholly by the transmitter; and that Defendant by reason of such ownership and operation is a "public utility" within the meaning of that term as used in the Federal Power Act. It further found that Defendant is subject to the requirements of that Act and the rules, regulations and orders issued thereunder applicable to "public utilities" and made findings with respect to the accounting treatment of the acquisition from California Electric Power Company. The Commission accordingly ordered Defendant to:

(i) Comply with the provisions of the Federal Power Act applicable to "public utilities" and the rules and regulations promulgated thereunder, including the requirements of the Uniform System of Accounts;

(ii) File with Commission, within 90 days from the date of the order, the data, statements, information, cost studies and reports required by and under the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and the Commission's order of May 11, 1937, related thereto;

(iii) Classify the excess over depreciated book cost (amounting to not less than $487,872.52)

paid by Defendant to California Electric Power Company for the latter's Arizona properties, in Account 100.5, Electric Plant Acquisition Adjustments, and then to dispose of that amount by a charge to Account 271, Earned Surplus;

(iv) Submit, within 30 days from the date of the order, two certified copies of the journal entries giving effect to the disposition referred to in (iii), above.

15. Defendant did not apply to the Commission for rehearing of that order of March 31, 1950 (Exhibit A, p. 9, infra), under Section 313(a) of the Federal Power Act (16 U.S.C. § 8251(a)) within 30 days from the date of such issuance or at any time thereafter, and did not at any time thereafter apply for court review thereof under Section 313(b) of the Act (16 U.S.C. § 8251(b)).

16. Due service by the Commission, in accordance with Sections 1.17(a) and 1.30(i) of the Commission's General Rules and Regulations (18 C.F.R. 1.17(a) and 1.30(i)), of orders and documents hereinabove referred to and acknowledgment of receipt thereof by Defendant was made by the mailing thereof by registered mail and return of Registry Return Receipts, copies of which are attached as Exhibits, and due service by counsel for the Commission staff, in accordance with Section 1.17(b) of the Commission's Rules (18 C.F.R. § 1.17(b)), is shown by certificates of service, copies of which are attached as Exhibits, as follows:

| Order or Document Description | Para. Herein | Date | Ex. No. | Trans. Ltr. or Cert. Reg. No. | Ex. No. | Acknow'ment Date | Ex. No. |
|---|---|---|---|---|---|---|---|
| Order initiating jurisdictional proceeding | 5 | 2-16-49 | B | 443257 | N | 2-21-49 | O |
| Order Setting Hearing | 10 | 4-21-49 | H | 443611 | P | 4-26-49 | Q |
| Order Setting Hour and Place, and Consolidating | 10 | 6- 1-49 | I | 443464 | R | 6- 6-49 | S |
| Trial Examiner's Decision | 12 | 9-22-49 | – | 443879 | T | 9-27-49 | U |
| Exceptions to same | 13 | 10-12-49 | – | —— | V | —— | – |
| Opinion 190 and Order | 1, 13 | 3-31-50 | A | 443924 | W | 4- 5-50 | X |

17. Defendant failed and refused, and continues to fail and refuse, to comply with the requirements of the Commission's order of March 31, 1950, referred to in paragraph 14 hereof; and has done so and continues to do so despite repeated demands upon it for compliance, set forth in letters from the Commission to Defendant, which letters (together with registry receipt thereof where sent by registered mail) are attached as Exhibits J, K, L, and M (pp. 44-48, infra).

18. By the failures and refusals referred to in paragraph 17, above, Defendant is engaged and is about to engage in acts or practices which constitute or will constitute violations of the Commission's order of March 31, 1950 (Exhibit A, p. 9, infra).

19. Defendant will, unless enjoined, continue to engage in the acts and practices referred to in paragraph 18, above.

Wherefore, the Commission prays:

I. That an order be made commanding Defendant to comply with the applicable provisions of the Federal Power Act and the rules and regulations promulgated thereunder, including the requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees, as ordered by paragraph (A) of the Commission's order of March 31, 1950 (Exhibit A, p. 30, infra).

II. That an order be made commanding the Defendant forthwith to file the data, statements, infor-

mation, cost studies and reports required by and under the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and order of May 11, 1937, applicable thereto, as ordered by paragraph (B) of the Commission's order of March 31, 1950 (Exhibit A, p. 30, infra) but within such reasonable period of time from the date of issuance of its order as the Court shall fix.

III. That an order be made commanding the Defendant to classify forthwith the excess over depreciated cost, amounting to not less than $487,-872.52, paid by it to California Electric Power Company for the latter's Arizona properties, in Account 100.5, Electric Plant Acquisition Adjustments, and forthwith to dispose of that amount from that account by a charge to Account 271, Earned Surplus, as ordered by paragraph (C) of the Commission's order of March 31, 1950 (Exhibit A, p. 31, infra).

IV. That an order be made commanding the Defendant to file with the Commission two certified copies of the journal entries giving effect to the disposition referred to in III, above, as ordered by paragraph (D) of the Commission's order of March 31, 1950 (Exhibit A, p. 31, infra), but within such reasonable period of time from the date of issuance of its order as the Court shall fix.

V. That the Defendant be enjoined from continuing the practice of failing and refusing to comply with the Commission's order of March 31, 1950,

In the Matter of Arizona Edison Company, Inc., Docket No. E-6194 (Exhibit A, p. 9-31, infra).

VI. Such other, further and different relief as to the Court may seem just.

/s/ BRADFORD ROSS,
General Counsel.

/s/ HOWARD E.
WAHRENBROCK,
Assistant General Counsel.

/s/ REUBEN GOLDBERG,
Attorney.

/s/ ABRAHAM R. SPALTER,
Attorney.
Counsel for Plaintiff.

EXHIBIT A

United States of America
Federal Power Commission

Docket No. E-6194

In the Matters of
ARIZONA EDISON COMPANY, INC.

Docket No. E-6212

CENTRAL ARIZONA LIGHT AND POWER COMPANY

OPINION No. 190

By the Commission:

These are proceedings by the Commission, upon its own motion, requiring respondents to show cause

why they should not be found to be "public utilities" under the Federal Power Act,[1] pursuant to orders dated February 15, 1949, in Docket No. E-6194 and April 20, 1949, in Docket No. E-6212. By order of June 1, 1949, the Commission consolidated the two proceedings for hearing purposes, and after due notice a public hearing was held on June 6, 1949. Opportunity to be heard was there afforded all interested persons, but neither Arizona Edison Company, Inc. ("Arizona Edison") nor Central Arizona Light and Power Company ("Central Arizona") appeared or participated in the proceedings.

## Background of Proceedings

Arizona Edison.

On October 23, 1947, in Docket No. IT-6096, California Electric Power Company filed an application under Section 203 of the Federal Power Act for authority to sell to Arizona Edison substantially all of its properties and electric facilities in Yuma County, Arizona, at a purchase price of $850,000 as compared with a depreciated cost on the books of California Electric amounting to $362,127.48 as of July 31, 1947. Arizona Edison is an Arizona corporation with its principal office in Phoenix, Arizona. It is engaged, solely in the State of Arizona, in the business of transmitting electric energy, and distributing and selling it at retail.[2] By order of

[1] 49 Stat. 863, 16 U.S.C. 791a, et seq.

[2] It makes wholesale sales also, but from a system not involved here.

February 20, 1948, the Commission directed that Arizona Edison show cause at a hearing to be held on March 11, 1948, why it should not find that, upon consummation of the proposed purchase, Arizona Edison would become a "public utility" subject to accounting requirements to be prescribed by the Commission with respect to the purchase price paid.

By letter of March 10, 1948, Arizona Edison advised the Commission that it would consummate the purchase upon entry by the Commission of an order authorizing the transaction even though the order stated that it was entered without prejudice to the right of the Commission to have its jurisdiction over Arizona Edison determined in a "lawful, separate and subsequent proceeding" and, if jurisdiction should be established, without prejudice to the Commission to require such accounting for the purchase as it might have required at the time of approval. In addition, Arizona Edison advised that it would restrict an amount of $500,000 of its earned surplus against any declaration of dividends for a period of two years after the transaction.

By order of March 11, 1948, the Commission approved the proposed sale and vacated its order of February 20, 1948, directing that a hearing be held. The sale was consummated on April 1, 1948, and during July and August, 1948, a field study of Arizona Edison's facilities and operations was made by members of the Commission's staff. On the basis of the report on this study, the Commission by order of February 15, 1949, directed Arizona Edison to show cause why it should not be found to be a "pub-

lic utility" and directed to dispose of the amount of $487,872.52, representing excess over depreciated book cost paid by Arizona Edison to California Electric, by a charge of such amount to earned surplus. A copy of the staff report was served on Arizona Edison with this order.

By letter of March 28, 1949, Arizona Edison's General Counsel stated that, in his opinion, the Commission was without jurisdiction, that he had advised the company not to make any response to the order or to enter any appearance in the proceeding, and that the officials of the company had concluded to follow his advice.

Central Arizona.

Central Arizona is likewise an Arizona corporation with its principal office in Phoenix, Arizona. It is engaged, solely in the State of Arizona, in the business of generating and transmitting electric energy, and distributing and selling it at retail and wholesale. By letter of October 19, 1945, the Commission advised Central Arizona that it had been classified for administrative purposes as a "public utility" and was required to submit reclassification

And original cost studies in accordance with this Commission's Uniform System of Accounts. By letter of September 16, 1946, Central Arizona denied the Commission's jurisdiction and stated that it was unwilling to comply with the Commission's Uniform System of Accounts.

By order of April 20, 1949, the Commission directed Central Arizona to show cause why it should not be found to be a "public utility" and that a

public hearing be held on June 6, 1949. By letter of May 7, 1949, General Counsel for Central Arizona, who was also General Counsel for Arizona Edison, advised the Commission that Central Arizona had accepted his advice that the Commission lacked jurisdiction and that it should not make any response to the order, or enter any appearance in the proceeding, or appear at the hearing.

Consolidated hearing.

Although the two companies are not shown to be affiliated, the matters involved and the issues presented were generally interrelated and in many respects identical. Hence, the cases were consolidated by order of June 1, 1949, for purpose of hearing, which was held on June 6, 1949, in Washington, D. C. The staff of the Commission introduced evidence establishing all facts regarding the companies' facilities and operations in so far as they are pertinent to this proceeding. Neither company appeared or participated.

## Facilities and Operations

Upon consideration of the evidence introduced at the hearing, which was uncontroverted by Arizona Edison or Central Arizona since neither appeared or participated in the proceeding, we find the following to be the pertinent facts and circumstances relating to the facilities and operations of such companies.

Arizona Edison.

Arizona Edison owns and operates eight separate electric systems scattered through central and southern Arizona, among which are the Maricopa, Coolidge-Florence, and Yuma Systems. These three systems, the only ones involved in this proceeding, supply ultimate consumers alone in their separate service areas, and all receive electric energy generated by the United States Bureau of Reclamation ("Bureau") in California at the Parker Dam and in Nevada at the Hoover Dam. The Yuma System also receives energy generated by the Bureau at its Siphon Drop Generating Station in California.

At the federally owned and operated Hoover Dam on the Colorado River, defining the boundary between Arizona and Nevada, energy produced by generators on the Nevada side of the River[3] is supplied to a 230 kv transmission line of the Metropolitan Water District of Southern California. This line extends in a southerly direction through parts of Nevada and California to the generating station in California of the Bureau's Parker Dam on the Colorado River, defining the boundary between California and Arizona. This line is the only connection between the two projects and is used, among other things, to transmit energy from Hoover to Parker, except at those times when energy from

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[3]It is possible that energy generated on the Arizona side of the river may be mingled with that from the Nevada side in case of an outage, on infrequent occasions, of one or more of the Nevada generators.

the Parker Dam is being supplied to the Metropolitan Water District in California.

From Parker the Bureau transmits energy generated there in California—often mingled with energy generated at Hoover in Nevada—over its two 161 kv lines a distance of 137 miles to the Bureau's substation at Phoenix, Arizona. At Phoenix, a part of this energy is delivered to Central Arizona and to the Salt River Valley Water Users Association; the remainder of this energy is transmitted in a southeasterly direction over a 115 kv line owned by the Bureau to Coolidge, Arizona, 53 miles from Phoenix, where part is delivered to the United States Indian Irrigation Service ("Indian Service"), and to Tucson, Arizona, where part is delivered to The Tucson Gas, Electric Light and Power Company.[4]

Part of the energy that the Indian Service receives from the Bureau at Coolidge it transmits 23 miles in a southwesterly direction over its 69 kv line and delivers at its Casa Grande substation to Arizona Edison's Maricopa System, which is located about 40 miles south of Phoenix. Arizona Edison transmits such energy, amounting to 5,486,746 kwh in 1948, 9.6 miles west to its Sexton substation over its 69 kv line without serving any customers between Casa Grande and the Sexton substations. At this substation the energy is stepped down and converted for service to an irrigation pumping load in

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[4]Deliveries to the Indian Service and to the Tucson company thus made directly by the Bureau, are made in part for the account of Central Arizona.

the area. Although the Indian Service maintains a diesel generating station at Coolidge, at all times when the energy the Indian Service receives at Coolidge from the Bureau exceeds the load on the Indian Service's 69 kv circuits, including the delivery to Arizona Edison's Maricopa System at Casa Grande, the energy delivered at Casa Grande is 100% out-of-state. This condition obtained during substantial periods of time. At other times, the out-of-state energy is mingled with energy generated at Coolidge.

At Coolidge, the Indian Service delivers some of the out-of-state energy received from the Bureau, as stated above, mingled with energy generated at its Diesel plant in Coolidge, totalling 5,617,972 kwh in 1948, at 12 kv to Arizona Edison's Coolidge-Florence System. Part of this energy is transmitted by Arizona Edison from Coolidge in a northeasterly direction to Florence over its 11.5 mile, 12 kv line, which connects substations in the two towns, and serves no customers along the route.

The Bureau delivers out-of-state energy (37,449,-145 kwh in 1948) to Arizona Edison's Yuma System, located in the extreme southwestern corner of Arizona, at Arizona Edison's Mesa substation and at the Bureau's Headquarters substation in Yuma, and so furnishes almost the entire requirements of this system.[5] This energy is transmitted at 34.5 kv from

[5]A relatively small amount of 250,937 kwh was also furnished in 1948 by standby facilities of Arizona Edison in Yuma and 232,719 kwh were purchased from Central Arizona and California Electric Power Company for emergency purposes.

the Bureau's Gila substation about ten miles east of Yuma and from the Bureau's Siphon Drop generating station to the north in California. Energy reaches the Gila substation on the Bureau's 116-mile, 161 kv line from Parker Dam.

The Yuma System includes several 34.5 kv lines and their attendant substations.

The longest of these lines commences at the Mesa Substation in Yuma, passes the municipal limits, and extends in a southwesterly direction through agricultural areas about 12 line miles to a substation in the incorporated city of Somerton (pop. 1,247 in 1940) and thence about 7 line miles further to a substation in the unincorporated community of Gadsden (pop. 350 in 1940), 19 miles in all without serving customers. At these substations, and at two others which are served by the line between Yuma and Somerton, the energy is stepped down 34.5 kv to 4 kv, and lines at the lower voltage, some of which are supported on the same poles as the 34.5 kv lines for various distances, emanate from each of the substations to serve the adjacent localities including the towns of Somerton and Gadsden. The Mesa-Gadsden line, therefore, serves the function of transmitting energy in bulk from the Mesa substation in Yuma to the several substations referred to above where local distribution begins for service to the respective communities and agricultural areas.

Another 34.5 kv line extends eastward from the Mesa substation about 13 miles, serving a substation

at an airport and one customer about three miles from its terminus, and also supports on the same poles a 4 kv secondary line for about three miles. Other 34.5 kv lines are .5, 1.25, and 1.5 miles in length. These lines, the Mesa-Gadsden line, and the airport line are used to transmit out-of-state energy and serve no customers directly except the airport and one other customer on the airport line mentioned above.

Central Arizona.

Central Arizona owns and operates an integrated system in central and southwestern Arizona located in Maricopa, Yuma and Yavapai Counties, and a separate system serving the town of Parker. From the former system it sells energy to 62,000 ultimate consumers in 54 communities in a service area of 12,000 square miles and to several customers for resale. In 1948, its total energy requirements were 624,804,505 kwh, and its total wholesale sales amounted to 55,327,432 kwh. It purchased 270,686,-705 kwh of which 211,192,002 kwh was supplied by the Bureau and generated at Hoover Dam in Nevada and Parker Dam in California.

The Bureau transmits out-of-state energy from Parker and Hoover, over its two 161 kv circuits extending from Parker to Phoenix where delivery is made to Central Arizona.[6] The Bureau steps this energy down to 69 kv and 12.5 kv in its substation and delivers it to Central Arizona's busses of the same voltage in the same substation.

The 12.5 kv bus in the Phoenix substation, which

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[6]See, supra, p. 6.

is used to serve the Phoenix area, is connected with Central Arizona's one generating station, a steam plant of 72,500 kw capacity. The generation of this station was insufficient in 1947 to supply the Phoenix area; and, although its generation in 1948 exceeded the Phoenix area requirements, Central Arizona's total system retail requirements exceeded such generation by more than 100,000,000 kwh.

Throughout 1947 and 1948, at least 50%, and at times 100%, of the energy on the 69 kv bus in the Phoenix substation was out-of-state energy. Energy from this bus is supplied in these proportions to three 69 kv circuits of Central Arizona known as the Avondale, Sycamore, and Litchfield lines.

The Avondale and Litchfield lines form a 69 kv loop approximately 39 miles long extending northwest from Phoenix to Central Arizona's Litchfield substation. From Litchfield, a 69 kv line extends southwesterly 21.5 miles to Central Arizona's Buckeye substation. Another 69 kv line extends 69 miles southwesterly from Litchfield through the Buckeye substation to Central Arizona's Dendora substation. From Litchfield, still another 69 kv line extends northwesterly about 42 miles to its Wickenburg substation, where Central Arizona sells energy at wholesale to the town of Wickenburg, amounting to 1,955,800 kwh in 1948, and thence on 27 miles to its Aguila substation.

The Sycamore line leaves the 69 kv bus in the Phoenix substation and extends northerly about 77 miles to an interconnection with Arizona Power Company, where Central Arizona sells energy to

that company for resale, amounting to 11,959,567 kwh in 1948.

The aforementioned 69 kv lines serve no customers directly, except the wholesale customers mentioned, and are used to transmit varying amounts of out-of-state energy in bulk from the Phoenix substation to the points of interconnection with such wholesale customers and to the various substations for retail distribution in the surrounding areas.

Including those mentioned above, Central Arizona made the following sales for resale in 1948:[7]

| KWH | Purchaser | Place |
|---|---|---|
| 1,955,800 | Town of Wickenburg | Wickenburg |
| 11,959,567 | Arizona Power Company | Sycamore |
| 2,092,635 | Arizona Edison Company, Inc. | Gila Bend |
| 7,204,885 | U. S. Indian Irrigation Service | Coolidge |
| 30,885,076 | Salt River Valley Water Users Association | (Mostly at) Phoenix |
| 1,125,690 | Tucson Gas, Electric Light and Power Company | Tucson |
| 103,779 | Miscellaneous. | |
| 55,327,432 | | |

[7]Arizona Edison sold its Gila Bend System to Central Arizona at the end of 1948 so that Central Arizona's sales to Arizona Edison at Gila Bend ceased at that time.

Deliveries on the sales to the Indian Service and to the Tucson Company, were made over electric facilities of the Bureau. See p. 6 and note 4. Deliveries at Phoenix on the sales to the Salt River Valley Water Users Association were made over Bureau facilities in the substation in Phoenix.

The figure for deliveries to Arizona Edison was taken from Central Arizona's Power System Statement for 1948, Form No. 12, as compared with a figure of 2,132,311 kwh appearing in Arizona Edi-

Discussion

Whether Arizona Edison and Central Arizona are "public utilities" depends on whether they own and operate the kinds of facilities referred to in Section 201(b) of the Act, that is, facilities for the "transmission of electric energy in interstate commerce" or for "the sale of electric energy at wholesale in interstate commerce." That Section also excludes from Commission jurisdiction "facilities used for the generation of electric energy," "facilities used in local distribution," facilities used "only for the transmission of electric energy in intrastate commerce," and "facilities for the transmission of electric energy consumed wholly by the transmitter." It is clear to us that each of these companies owns and operates facilities for such transmission or sale, or both, which do not fall within any of these exceptions.

Section 201(c) provides that "electric energy shall be held to be transmitted in interstate commerce if transmitted from a state and consumed at any point outside thereof." Here, all of the out-of-state energy involved—from Hoover, from Parker and from Siphon Drop—is transmitted in interstate commerce within that definition and Section 201(b) of the Act. Federal Power Commission v.

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son's Form No. 12 and in its Annual Report, FPC Form No. 1, and in the testimony. The figure for deliveries to the Indian Service was taken from Central Arizona's Form No. 12 and compares with the figure of 7,308,664 kwh appearing in Central Arizona's FPC Form No. 1 and in the testimony.

East Ohio Gas Company, et al., 338 U. S. 464, No. 71, October Term, 1949, decided January 9, 1950; Jersey Central Power & Light Company v. Federal Power Commission, 319 U. S. 61, 70-73.

Such is Arizona Edison's transmission of out-of-state energy on its 69 kv line from Casa Grande to Sexton, and from Coolidge to Florence on its 12 kv line. After such transmission in bulk, the voltage is stepped down and distribution made. So used, these lines are for the transmission of electric energy in interstate commerce within the meaning of Section 201(b) and do not come within its exceptions. Also, practically all of the energy required by Arizona Edison's Yuma system is transmitted from Hoover, Parker, and Siphon Drop. On the Yuma system, Arizona Edison's 34.5 kv lines transmit that out-of-state energy in bulk to the various substations where it is stepped down for subsequent distribution. These lines are also facilities for the transmission of electric energy in interstate commerce under Section 201(b), and outside all its exceptions.

Likewise, the energy which Central Arizona receives at Phoenix from Parker and Hoover and transmits in bulk over its 69 kv lines to its various substations and to the interconnections with its wholesale customers is energy transmitted in interstate commerce within the meaning of Section 201(c). This use of these lines by Central Arizona makes it subject to the jurisdiction of the Commission under Section 201(b), and such use does not fall within any of the exceptions provided by that section.

Additionally, some of these lines are used in making sales for resale of the out-of-state energy so transmitted. They are thus facilities used "for the sale of electric energy at wholesale in interstate commerce" within the meaning of Section 201(b). Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U. S. 498.

We have not overlooked the fact that the out-of-state energy involved in both cases was generated outside of and transmitted into Arizona by an agency of the Federal Government. However, the fact that a Federal agency owns and operates the facilities by which this portion of the operations is accomplished is of no consequence in determining whether continued transmission and subsequent sale of that energy by means of facilities owned and operated by others constitute transmission and sale in interstate commerce by such other persons within the meaning of the Act.

It follows that, within the meaning of Section 201(b) of the Act, both Arizona Edison and Central Arizona own and operate facilities for the transmission of electric energy in interstate commerce, and Central Arizona also owns and operates facilities for the sale at wholesale of electric energy in interstate commerce. These facilities do not fall within any of the exceptions of that Section. Thus, both companies are "public utilities" under Section 201(e) and subject to the applicable requirements of the Act and the rules and regulations thereunder, including such requirements as we may properly impose with regard to accounting.

As related above, on April 1, 1948, Arizona Edison purchased from the California Electric Power Company certain electric properties in Yuma County, Arizona. California Electric's application for the approval of this sale, referred to in our order of March 11, 1948, in Docket No. IT-6096, recited that the purchase price of the properties to be paid by Arizona Edison was $850,000 and that the depreciated book cost of such property, as of July 31, 1947, was $362,127.48. Under such circumstances, the excess above original cost less depreciation paid by Arizona Edison for such property, and reflected on its books, is not less than $487,872.52, since the original cost less depreciation which was $362,127.48 on July 31, 1947, was further reduced by depreciation which accrued between July 31, 1947 and April 1, 1948. The excess above depreciated original cost is properly classifiable under the Commission's Uniform System of Accounts in Account 100.5, Electric Plant Acquisition Adjustments, pending final disposition thereof.

Arizona Edison's commitment to hold $500,000 of earned surplus for a period of two years after the consummation of the sale as evidenced by its letter of March 10, 1948, was for the purpose of providing a reserve for the disposition of any acquisition adjustment which the Commission might require Arizona Edison to "write off" should it be found to be a "public utility" under the Act. It is proper and desirable in the public interest, therefore, to provide by order that the amount paid by Arizona Edison to California Electric in excess of the actual depre-

ciated book cost of the properties as of April 1, 1948, be written off to earned surplus. To give effect to this determination Arizona Edison shall submit, within 30 days after the issuance of this order, appropriate journal entries to adjust its books of account accordingly. Until this has been accomplished, the amount of $500,000 reserved by Arizona Edison in its earned surplus account, as stated in its letter of March 10, 1948, shall be maintained without diminution on account of dividends or otherwise.

An appropriate final order with findings of fact will be entered in accordance with this opinion.

....., Nelson Lee Smith, Chairman.

....., Thomas C. Buchanan, Commissioner.

....., Mon C. Wallgren, Commissioner.

....., Harrington Wimberly, Commissioner.

Dated at Washington, D. C., this 29th day of March, 1950.

....., Leon M. Fuquay, Secretary.

Date of Issuance: March 31, 1950.

United States of America
Federal Power Commission

In the Matters of:

Docket No. E-6212
ARIZONA EDISON COMPANY, INC.;

Docket No. E-6194
CENTRAL ARIZONA LIGHT AND POWER COMPANY

Before: Commissioners Nelson Lee Smith, Chairman; Thomas C. Buchanan, Mon C. Wallgren and Harrington Wimberly.

March 29, 1950.

## FINDINGS AND ORDER DETERMINING STATUS AND PROVIDING FOR DISPOSITION OF PLANT ACQUISITION ADJUSTMENT

The Commission having considered the record with respect to the matters involved and the issues presented, and having issued its Opinion No. 190, which is hereby incorporated by reference and made a part hereof, further finds:

(1) Arizona Edison Company, Inc. ("Arizona Edison"), is an Arizona corporation with its principal office in Phoenix, Arizona. It owns and operates eight separate electric systems wholly within Arizona. Among such systems are the Maricopa, Coolidge-Florence, and Yuma systems, which serve ultimate consumers alone.

(2) Central Arizona Light and Power Company ("Central Arizona") is an Arizona corporation with its principal office in Phoenix. It owns and operates an integrated electric system in Arizona serving Phoenix and surrounding areas and a small separate system serving Parker, Arizona. From these systems, which are located wholly within the State, Central Arizona sells electric energy to ultimate consumers and for resale.

(3) Energy generated in Nevada, at the Hoover Dam, a federally owned project on the Colorado River, is transmitted, over a line owned and operated by the Metropolitan Water District of Southern California and extending through parts of Nevada and California to the Parker Dam, also a federally owned project on the same river.

(4) Energy generated in California at the Parker Dam, and energy from the Hoover Dam, is transmitted into Arizona by the United States Bureau of Reclamation ("Bureau") over its two 161 kv lines to its substation at Phoenix, Arizona. The Bureau delivers some of this energy to Central Arizona at this point and transmits some of it on its 115 kv line to Coolidge, Arizona, where the Bureau makes delivery to the United States Indian Irrigation Service ("Indian Service") in part for the account of Central Arizona, and to Tucson, Arizona, where the Bureau makes delivery to Tucson Gas, Electric Light and Power Company, also in part for the account of Central Arizona.

(5) The Indian Service delivers energy to Ari-

zona Edison's Maricopa system at Casa Grande. At times all of such energy comes from out-of-state, having been received by the Indian Service from the Bureau at Coolidge, as stated in (4) above, and transmitted by the Indian Service to Casa Grande. At other times such out-of-state energy is mingled with energy generated by the Indian Service at its Coolidge generating station.

(6) The Indian Service delivers energy to Arizona Edison's Coolidge-Florence system at Coolidge. Such energy is in part generated out-of-state and received from the Bureau as stated in (4) above and in part generated by the Indian Service at Coolidge.

(7) The Bureau transmits energy from Parker in California and from Hoover in Nevada over its 161 kv line to its Gila substation in Arizona, from which deliveries are made to Arizona Edison's Yuma system at its Mesa substation and at the Bureau's Headquarters substation, both in Yuma, Arizona.

(8) The Bureau transmits energy generated at its Siphon Drop Generating Station in California north of Yuma and delivers it to Arizona Edison's Yuma system at the points of delivery mentioned in (7) above.

(9) Arizona Edison owns and operates in its Maricopa system a 69 kv line extending westerly approximately 9.6 miles from the Casa Grande substation of the Indian Service to Arizona Edison's Sexton substation. This line is used to transmit

energy in bulk generated outside of the state, received from the Indian Service as stated in (5) above, and consumed on the Maricopa system.

(10) Arizona Edison owns and operates in its Coolidge-Florence system a 12 kv line, 11.5 miles long, extending from its Coolidge substation to its Florence substation. On this line, it transmits energy in bulk, in part generated outside of the state, received from the Indian Service as stated in (6) above, and consumed in Florence.

(11) Arizona Edison owns and operates in its Yuma system several 34.5 kv lines emanating from its Mesa substation in Yuma over which it transmits energy in bulk generated outside the state from the points where the energy is received from the Bureau as stated in (7) and (8) above to the points where the energy is stepped down to 4 kv and local distribution is made to consumers on the Yuma system. Such points include the incorporated city of Somerton and the unincorporated community of Gadsden located in an argicultural area 12 line miles and 19 line miles respectively from the Mesa substation in Yuma.

(12) Arizona Edison, as an established course of business, transmits electric energy in interstate commerce over the facilities referred to in findings (9), (10), and (11), and the facilities referred to in those findings are facilities for such transmission and not facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intra-

state commerce or facilities for the transmission of electric energy consumed wholly by the transmitter.

(13) Arizona Edison owns and operates facilities for the transmission of electric energy in interstate commerce which is transmitted from the state in which it is generated and consumed at points outside thereof, which facilities are in addition to and do not include facilities used for the generation of electric energy, or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter.

(14) Arizona Edison owns and operates facilities subject to the jurisdiction of the Commission under Part II of the Federal Power Act within the meaning of Section 201(e) of the Act and is therefore a "public utility" within the meaning of the Act, and subject to its applicable requirements and the rules, regulations and orders issued thereunder.

(15) Central Arizona sells and delivers energy for resale to the Town of Wickenburg at Wickenburg and to Arizona Power Company at Sycamore.

(16) Central Arizona also sells energy to the Indiana Service at Coolidge for resale and to the Tucson Gas, Electric Light and Power Company at Tucson for resale, but in both cases deliveries are made over electric facilities of the Bureau as stated in (4) above.

(17) Central Arizona sells electric energy to approximately 62,000 ultimate consumers in 54 communities having a total population of approximately 350,000.

(18) To serve the customers referred to in (15), (16), and (17) above, Central Arizona purchases substantial amounts of energy from the Bureau and owns and operates a steam-electric generating station of 72,500 kw capacity at Phoenix, and a 69 kv transmission system aggregating approximately 280 circuit miles, including: lines from Phoenix through Litchfield to Buckeye and Dendora, 130 miles; from Litchfield to Wickenburg and Aguila, 69 miles; from Phoenix to Sycamore, 77 miles.

(19) All of Central Arizona's purchased energy, which is delivered by the Bureau at Phoenix as stated in (4) above, and all of the energy generated at the Phoenix generating station which is not used to supply the local loads served by its 12 kv transmission system at Phoenix, is transmitted in bulk through its 69 kv bus and lines to serve all parts of its system. Throughout 1947 and 1948, more than 50%, and at some times as much as 100%, of the electric energy transmitted through such bus and lines was generated outside the state, and was transmitted by Central Arizona in such ratios over its 69 kv transmission lines for sale to and resale by Arizona Power Company and the Town of Wickenburg, as well as for sale at retail by Central Arizona to its own retail customers.

(20) The transmission lines referred to in (18), together with appurtenant equipment, are used as an established course of business, for the transmission of electric energy generated outside of Arizona and consumed within that state and are facilities for transmission of electric energy in interstate commerce within the meaning of Section 201(b) of the Federal Power Act.

(21) As an established course of business, Central Arizona sells electric energy to each of the customers referred to in (15) and (16) at wholesale in interstate commerce within the meaning of Section 201(b) of the Act.

(22) In addition to the transmission lines referred to in (18), Central Arizona owns and operates facilities for the sales for resale, referred to in (15) and (16) including substations, metering equipment, transformers, and billing equipment. Such facilities are facilities for the sale at wholesale of electric energy in interstate commerce within the meaning of Section 201(b) of the Act.

(23) The facilities for the transmission or sale of electric energy at wholesale in interstate commerce referred to in (20) and (22) are in addition to and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter.

(24) Central Arizona is therefore a "public utility" within the meaning of the Act and subject to its applicable requirements, and the rules, regulations and orders issued thereunder, including the requirements of the Uniform System of Accounts prescribed by the Commission.

(25) The Commission approved the sale by California Electric Power Company of substantially all of its facilities in Yuma County, Arizona, to Arizona Edison, on March 11, 1948, in Docket No. IT-6096. These facilities consisted of approximately 33 miles of 34.5 kv single circuit transmission lines serving electric loads through six substations having an aggregate capacity of 4,900 kva, and connected with distribution facilities emanating from such substations. The purchase price paid by Arizona Edison for such facilities was $850,000, while California Electric in its application in the above docket stated that the book cost of the facilities was $623,831.87, and the depreciated book cost as of July 31, 1947, was $362,127.48. At the time of the consummation of the sale on April 1, 1948, at least $487,872.52 of the purchase price paid by Arizona Edison was in excess of the depreciated book cost reflected on the books of California Electric Power Company, and classifiable in Account 100.5, Electric Plant Acquisition Adjustments.

(26) Approval of the sale referred to in (25) was based upon the application of California Electric Power Company and the commitment of Arizona Edison stated in its letter of March 10, 1948,

in which Arizona Edison agreed that if, as a result of a subsequent separate and lawful proceeding, it should be established that Arizona Edison was subject to the jurisdiction of the Commission, the Commission's approval of the sale would be without prejudice to a requirement respecting the accounting for such purchase by Arizona Edison as the Commission might lawfully have required at the time of approval. To insure the accounting which might lawfully be required, Arizona Edison agreed to retain for such purpose $500,000 in its earned surplus account for a period of two years from the date of the consummation of the sale.

(27) After a field study and examination of the facilities and operations of Arizona Edison, the Commission on February 15, 1949, directed that company to show cause why the Commission should not find and determine that it was a "public utility" within the meaning of that term as used in the Federal Power Act, and, in the event it should be found to be a public utility, why the Commission should not direct that Arizona Edison dispose of the amount of $487,872.52, referred to in (25), representing excess over depreciated book cost paid to California Electric Power Company for the latter's Arizona properties, by a charge of such amount to earned surplus.

(28) Arizona Edison made no response to the show cause order of February 15, 1949, referred to in (27) above. Subsequently, the hearing in this proceeding was held after due notice to Arizona

Edison, but it did not appear or participate in the hearing.

(29) Arizona Edison has owned and operated the facilities referred to in (9) and (10) above, and a portion of the facilities referred to in (11) above, since prior to the acquisition of the facilities described in (25) above, and was a "public utility" within the meaning of that term as used in the Federal Power Act at the time of such acquisition and has been since that date.

(30) It is reasonable and appropriate to carry out the purposes of the Federal Power Act that Arizona Edison be directed and required (a) to dispose of the adjustment amount referred to in (25) by charging it to earned surplus, (b) to submit journal entries making such disposition effective, and (c) to retain the amount of $500,000 referred to in (26) until such journal entries are recorded upon its books of account.

The Commission orders:

(A) Arizona Edison Company, Inc., and Central Arizona Light and Power Company be and they are hereby required to comply with the applicable provisions of the Federal Power Act and the rules and regulations promulgated thereunder, including the requirements of the Uniform System of Accounts.

(B) Arizona Edison Company, Inc., and Central Arizona Light and Power Company shall, within 90 days from the date of this order, file with the Commission the data, statements, information, cost

studies and reports required by and under the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and the Commission's order of May 11, 1937.

(C) The excess over depreciated book cost paid by Arizona Edison to California Electric Power Company for the latter's Arizona properties (amounting to not less than $487,872.52) shall be classified in Account 100.5, Electric Plant Acquisition Adjustments, and then be disposed of by a charge of that amount to Account 271, Earned Surplus.

(D) Arizona Edison shall submit, within 30 days from the date of this order, two certified copies of the journal entries giving effect to the above-required disposition and shall continue to restrict against the payment of dividends or other disposition, the amount of $500,000 referred to in finding (26) above until such journal entries are recorded upon its books of account.

By the Commission.

....., Leon M. Fuquay, Secretary.

Date of Issuance: March 31, 1950.

EXHIBIT B

United States of America Federal Power Commission

Docket No. E-6194

In the Matter of:
ARIZONA EDISON COMPANY, INC.

Before: Commissioners Nelson Lee Smith, Chairman; Thomas C. Buchanan, Claude L. Draper, Leland Olds and Harrington Wimberly.

February 15, 1949.

ORDER TO SHOW CAUSE

On March 11, 1948, the Commission issued an order in the proceeding entitled In the Matter of California Electric Power Company, Docket No. IT-6096, authorizing and approving the sale by that company of substantially all of its electric facilities in Yuma County, Arizona, to Arizona Edison Company, Inc., ("Arizona Edison").

The Commission in the above-mentioned order, determined that the proposed sale of facilities, which included facilities for the transmission of electric energy subject to the jurisdiction of this Commission, would be in the public interest by reason of the terms and conditions contained in the application and the letter submitted by Arizona Edison on March 10, 1948.

Arizona Edison in its letter dated March 10, 1948, agreed that if as a result of a subsequent separate

and lawful proceeding it is established that Arizona Edison is subject to the jurisdiction of the Commission, approval of the sale would be without prejudice to the Commission to require such accounting for the purchase as the Commission might have lawfully required at the time of the approval of such sale. Arizona Edison also advised in its letter that it would restrict an amount of $500,000 of its earned surplus account against any declaration of dividends for a period of two years from the date of consummation of the transaction. The sale was consummated on April 1, 1948.

Members of the Commission's staff have recently completed a field study and examination of the electric facilities and operations of Arizona Edison and have submitted a report to the Commission entitled "Field Study of the Facilities and Energy Flow on the Arizona Edison Company, Inc., and Connecting Systems," which report is herewith served on Arizona Edison.

From the staff's report, it appears that Arizona Edison owns and operates facilities in its Gila Bend, Maricopa, Coolidge-Florence, and Yuma Systems for the transmission of electric energy which is generated in the States of California and Nevada and consumed at points outside the State in which it is generated, including facilities which are in addition to, and do not include facilities for the generation of electric energy, facilities used in local distribution, or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Arizona Edison may, therefore, be

a public utility within the meaning of that term as used in the Federal Power Act.

The Commission orders:

(A) Arizona Edison shall show cause, if any there be, under oath:

(i) Why the Commission should not find and determine that it is a public utility within the meaning of that term as used in the Federal Power Act;

(ii) In the event that Arizona Edison is found to be a public utility within the meaning of that term as used in the Federal Power Act, why the Commission should not require it to comply with the provisions of the Federal Power Act, and the General Rules and Regulations promulgated thereunder, applicable to public utilities;

(iii) In the event that Arizona Edison is found to be a public utility within the meaning of that term as used in the Federal Power Act, why the Commission should not by order, find, determine and direct that Arizona Edison dispose of the amount of $487,872.52, representing excess over depreciated book cost paid by Arizona Edison to California Electric Power Company for the latter's Arizona properties, by a charge of such amount to earned surplus.

(B) The Secretary shall serve a copy of the report referred to above upon Arizona Edison concurrently with the service of this order.

(C) Arizona Edison shall submit its response to this order and to the above-mentioned report in writing, within 45 days from the date of service of this order.

(D) Arizona Edison's response shall be in the form of an offer of proof; shall set forth with particularity the facts upon which it relies; shall state whether Arizona Edison admits or denies the accuracy of the facts as stated in the report; and shall state upon what facts, if any, or what conclusions, Arizona Edison desires opportunity to introduce evidence and to be heard. Denials of the allegations of this order and of the statements in the staff report which are general and unsupported by specific facts upon which Arizona Edison relies will not be considered as complying with this order.

By the Commission.

/s/ LEON M. FUQUAY,
Secretary.

Date of Issuance: February 16, 1949.

Docketed February 15, 1949.

EXHIBIT C

United States of America Federal Power Commission

Docket No. IT-6096

In the Matter of:
CALIFORNIA ELECTRIC POWER COMPANY.

Before: Commissioners Nelson Lee Smith, Chairman; Claude L. Draper, Leland Olds and Harrington Wimberly.

February 20, 1948

ORDER FIXING DATE OF HEARING ON APPLICATION FOR AUTHORITY TO SELL FACILITIES AND REQUIRING PURCHASER TO SHOW CAUSE WITH RESPECT THERETO

It appears to the Commission that:

(1) On October 23, 1947, an application was filed pursuant to Section 203 of the Federal Power Act by California Electric Power Company ("Applicant"), seeking an order authorizing it to sell substantially all of its properties and electric facilities in Yuma County, State of Arizona, to Arizona Edison Company, Inc., for a base purchase price of $850,000 subject to certain adjustments.

(2) The application, the annual reports and power system statements of the companies involved, and a report of a field inspection by the Commission staff indicate that the facilities proposed to be sold include a part of Applicant's facilities having a

value in excess of $50,000 which may be subject to the jurisdiction of the Commission, and that the proposed sale thereof may be subject to the requirements of Section 203 of the Federal Power Act.

(3) Upon consummation of the proposed sale by Applicant and purchase by Arizona Edison Company, Inc., ("Respondent"), if such sale is subject to the requirements of Section 203, the Respondent will be a public utility within the meaning of the Federal Power Act, and, as such, subject to accounting requirements imposed by the Commission from the time of consummation of such sale.

(4) Upon final consideration of the application the Commission may find the proposed sale consistent with the public interest only upon conditions with respect to the accounting for the purchase by the Respondent.

The Commission orders that:

(A) A hearing be held on March 11, 1948, at 10:00 a.m. in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C., concerning the matters involved and the issues presented by such application and this order.

(B) The respondent show cause at the hearing why the Commission should not find and determine that upon consummation of the proposed purchase Respondent will become and be a public utility within the meaning of the Federal Power Act, subject to accounting requirements prescribed by the Commission, including any requirements with re-

spect to the purchaser's accounting for the purchase price paid which the Commission may find necessary in the public interest.

By the Commission.

LEON M. FUQUAY,
Secretary.

Date of Issuance: February 24, 1948.

Docketed February 26, 1948.

## EXHIBIT D

Arizona Edison Company, Inc.
Phoenix, Arizona

March 10, 1948.

Federal Power Commission,
Washington, D. C.

Gentlemen:

With respect to the Matter of California Electric Power Company, Docket #IT-6096, the undersigned, Arizona Edison Company, Inc., as contract purchaser under contracts of October 7, 1947, between the companies named, of the properties of the California Company in Yuma County, Arizona, as set forth in the application of that Company for order authorizing sale pursuant to Section 203(a) of the Federal Power Act by this letter advises the Commission:

That Arizona Edison will consummate purchase of such properties upon entry by the

Commission of order authorizing the California Company to sell such properties, all as stipulated in said contracts of October 7, 1947, even though such order to California Company may declare that such order is entered without prejudice to the right of the Commission, if it so elects, to have adjudicated in a lawful, separate and subsequent proceeding the question of its jurisdiction under the Federal Power Act, if any, over Arizona Edison and if jurisdiction should be established, then without prejudice to the Commission to require such accounting for the purchase as lawfully it might have required at the time of approval of such sale.

Further, Arizona Edison advises that upon consummation of such purchase and for a period of two years from and after such consummation, Arizona Edison will restrict an amount of $500,000 of its earned surplus (including but not in addition to restrictions contained in that certain "Indenture of Mortgage and Deed of Trust" by Arizona Edison to Bank of New York and William Young, Jr., Trustees, of date March 1, 1944) against any declaration of dividends during such period.

Yours truly,

ARIZONA EDISON
COMPANY, INC.

By /s/ FRANK L. SNELL,
General Counsel.

Docketed March 10, 1948.

EXHIBIT E

United States of America Federal Power Commission

Docket No. IT-6096

In the Matter of:
CALIFORNIA ELECTRIC POWER COMPANY.

Before: Commissioners Nelson Lee Smith, Chairman; Claude L. Draper, Leland Olds, and Harrington Wimberly.

March 11, 1948.

ORDER APPROVING SALE OF FACILITIES, AND VACATING ORDER FIXING DATE OF HEARING AND ORDER TO SHOW CAUSE

It appears to the Commission that:

(a) On October 23, 1947, an application was filed pursuant to Section 203 of the Federal Power Act by California Electric Power Company ("Applicant"), seeking an order authorizing it to sell substantially all of its properties and electric facilities in Yuma County, Arizona, to Arizona Edison Company, Inc., for a base purchase price of $850,000 subject to certain adjustments.

(b) The facilities proposed to be sold consist of approximately 33 miles of 34.5 kv single circuit transmission lines serving six substations having an aggregate capacity of 4900 kva, together with dis-

tribution facilities emanating from the aforementioned substations.

(c) The application indicates the book cost of the facilities proposed to be sold to be $623,831.87 and the depreciated book cost at July 31, 1947, to be $362,127.48.

(d) By order dated February 20, 1948, the Commission directed that a hearing be held on March 11, 1948, in Washington, D. C., concerning the issues presented by the application and further directed Arizona Edison Company, Inc., to show cause at the hearing why the Commission should not find and determine that upon consummation of the proposed purchase it would become and be a public utility within the meaning of the Federal Power Act subject to accounting requirements prescribed by the Commission, including any requirements with respect to the accounting for the purchase price paid which the Commission may find necessary in the public interest.

(e) On March 3, 1948, Applicant filed a Petition for Reconsideration of the Commission's order of February 20, 1948, referred to in paragraph (d) above.

(f) By letter dated March 10, 1948, Arizona Edison Company, Inc., advised the Commission that if as a result of a subsequent separate and lawful proceeding it is established that Arizona Edison Company, Inc., is subject to the jurisdiction of the Commission, approval of the sale at this time will be without prejudice to the Commission to require such accounting for the purchase as the Commis-

sion might have lawfully required at the time of the approval of such sale. Arizona Edison Company, Inc., further advised that it will restrict an amount of $500,000 of its earned surplus account against any declaration of dividends, for a period of two years from the date of consummation of the transaction.

(g) Written notice of the aforesaid application has been duly given to the Public Utilities Commission of California, the Public Service Commission of Nevada, the Corporation Commission of Arizona and to the Governors of each of those States. Notice of the application was also published in the Federal Register on October 31, 1947 (12 F.R. 7095), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before November 14, 1947. No protest or petition or request to be heard in opposition to the granting of such application has been received.

(h) The Corporation Commission of Arizona and the Public Utilities Commission of California, by orders dated October 31, and November 19, 1947, respectfully, have approved the proposed sale of facilities.

Upon consideration of the application, the exhibits attached thereto and incorporated therein by Applicant, the Petition for Reconsideration filed by Applicant, and the letter submitted by Arizona Edison Company, Inc., in this matter, the Commission finds that:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set out in the Commission's order dated June 11, 1946, In the Matter of California Electric Power Company, Docket No. IT-5991. Applicant subsequent to the sale of its Arizona properties, as hereinafter authorized, will continue to be a public utility within the meaning of that term as used in the Federal Power Act.

(2) The proposed sale of facilities by Applicant include facilities for the transmission of electric energy transmitted from one State and consumed by persons other than the transmitter thereof at points outside of such State, and the sale of such facilities is subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed sale of facilities by the Applicant, upon the terms and conditions contained in the application and the letter submitted by Arizona Edison Company, Inc., on March 10, 1948, and as hereinafter authorized, will be consistent with the public interest.

The Commission orders that:

(A) The proposed sale of facilities referred to in paragraph (a) above, by the Applicant, for the reasons set forth in paragraph (3), above, is hereby authorized and approved, subject to the provisions of this order.

(B) The foregoing authorization is without

prejudice to the authority of this Commission or any other regulatory body, with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever pending, or which may come before this Commission, or such other regulatory body, and nothing in this order shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(C) This authorization shall expire unless acted upon within sixty days from the date of this order.

(D) Applicant shall report within ten days after the consummation of the proposed sale, as required by the Rules of Practice and Regulations, and shall file proposed journal entries within six months of the consummation of the proposed sale as required by the Commission's Uniform System of Accounts.

(E) The Commission's order dated February 20, 1948, in this matter and entitled "Order Fixing Date of Hearing on Application for Authority to Sell Facilities and Requiring Purchaser to Show Cause with Respect Thereto," be and the same hereby is vacated.

By the Commission.

/s/ LEON M. FUQUAY,
Secretary.

Date of Issuance: March 11, 1948.

Docketed March 11, 1948.

EXHIBIT F

Federal Power Commission

Docket No. IT-6096

Application of CALIFORNIA ELECTRIC POWER COMPANY for an Order Under Section 203 of Federal Power Act Authorizing the Sale of Facilities in Yuma County, Arizona.

Pursuant to the provisions of 18 C.F.R. 33.8, California Electric Power Company hereby reports to the Commission that the sale of facilities covered by its Application, dated the 17th day of October, 1947, in the above docket, and authorized by Order of the Commission dated March 11, 1948, was consummated on April 1, 1948, in accordance with the terms and conditions named in the Agreement of Sale and Purchase, dated October 7, 1947, and attached to said Application as Exhibit L-1.

Dated at Riverside, California, this 7th day of July, 1948.

CALIFORNIA ELECTRIC
POWER COMPANY,

By /s/ CARL C. ERNST,
Vice-President.

Attest:

/s/ [Illegible]
Assistant Secretary.

State of California,
County of Riverside—ss.

Carl C. Ernst, being first duly sworn, on oath deposes and says: That he is an officer, to wit, Vice-President of California Electric Power Company, a corporation, applicant above named, and as such verifies this report on behalf of such corporation; that he has read the above and foregoing report and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief and as to those matters that he believes it to be true.

/s/ CARL C. ERNST.

Subscribed and sworn to before me this 7th day of July, 1948.

/s/ L. G. PARK,
Notary Public in and for the County of Riverside,
State of California.

My Commission Expires July 3, 1950.

Docketed July 12, 1948, Federal Power Commission.

EXHIBIT G

Snell, Wilmer, Walsh, Melczer & Beauchamp
Attorneys at Law
Heard Building
Phoenix, Arizona

March 28, 1949.

Leon M. Fuquay, Secretary,
Federal Power Commission,
Washington, D. C.

Dear Sir:

Arizona Edison Company, Inc., has submitted to me, as its General Counsel, copy of "Order to Show Cause" (together with attached engineering "Field Report"), issued February 16, 1949, under Docket No. E-6194 in a proceeding then initiated by the Commission entitled "In the Matter of Arizona Edison Company, Inc."

It is my considered judgment, predicated upon said documents, all relevant facts and the applicable law, and after consultation with other counsel familiar with the Federal Power Act and the administration thereof by the Commission, that the Commission is without jurisdiction in the premises. Accordingly, I have advised by client not to make any response of any kind to the Order or to enter any appearance whatever in the proceeding. This advice, the officials of Arizona Edison after careful consideration have concluded to follow.

This letter is written to you purely as a matter

of courtesy that the Commission may know the position taken by the Company.

Yours very truly,

/s/ FRANK L. SNELL,

Docketed March 31, 1949.

## EXHIBIT H

United States of America Federal Power Commission

Docket No. E-6194

In the Matter of:
ARIZONA EDISON COMPANY, INC.

Before: Commissioners Nelson Lee Smith, Chairman; Thomas C. Buchanan, Claude L. Draper, Leland Olds, and Harrington Wimberly.

April 20, 1949.

### ORDER SETTING HEARING

By order dated February 15, 1949, the Commission directed Arizona Edison Company, Inc., (Arizona Edison) within 45 days from the date of service of the order, to show cause, if any there be, why the Commission should not find and determine that Arizona Edison is a "public utility" within the meaning of that term as used in the Federal Power Act, and why, if so determined, it should not comply with the provisions of the Federal Power Act and

the rules and regulations, including the Uniform System of Accounts, promulgated thereunder, applicable to public utilities, and why it should not charge to earned surplus an amount representing excess over depreciated book cost paid by Arizona Edison to California Electric Power Company for the latter company's Arizona properties.

Concurrently with the order of February 15, 1949, the Commission served on Arizona Edison a copy of a report by members of the staff of a field study of the facilities and energy flow on Arizona Edison's system, from which report it appears that Arizona Edison may be a "public utility."

Arizona Edison, through its counsel, advised the Commission by letter dated March 28, 1949, that it would make no response to the order of February 15, 1949, or enter any appearance whatever in the proceeding.

The Commission orders:

(A) A public hearing be held commencing on June 6, 1949, at an hour and place later to be designated, respecting the matters involved and the issues presented in this proceeding.

(B) Interested State commissions may participate as provided by Rules 1.8 and 1.37(f) of the Commission's General Rules and Regulations, including Rules of Practice and Procedure, dated January 1, 1948 [18 CFR 1.8 and 1.37(f)].

By the Commission.

....., Leon M. Fuquay, Secretary.

Date of Issuance: April 21, 1949.

EXHIBIT I

United States of America Federal Power Commission

In the Matters of:

Docket No. E-6194

ARIZONA EDISON COMPANY, INC.

Docket No. E-6212

CENTRAL ARIZONA LIGHT AND POWER COMPANY.

Before: Commissioners Nelson Lee Smith, Chairman; Thomas C. Buchanan, Claude L. Draper, Leland Olds and Harrington Wimberly.

June 1, 1949.

ORDER FIXING PLACE OF HEARING AND CONSOLIDATING PROCEEDINGS

By order dated April 20, 1949, the Commission directed that a public hearing be held commencing June 6, 1949, respecting the matters involved and issues presented in the proceeding entitled In the Matter of Arizona Edison Company, Inc., Docket No. E-6194.

By order dated April 20, 1949, in Docket No. E-6212, the Commission directed Central Arizona Light and Power Company to show cause, if any there be, why the Commission should not make the findings and determinations therein set forth, The

order further directed that a public hearing be held commencing on June 6, 1949, respecting the matters involved and the issues presented in that proceeding.

The matters involved and the issues presented in the above-named proceedings are generally interrelated and in many respects identical.

Upon consideration whereof the Commission finds:

It is reasonable, necessary and appropriate in the public interest that those proceedings be consolidated for the purpose of hearing.

The Commission orders:

(A) The above-docketed proceedings be and they hereby are consolidated for purposes of hearing.

(B) The public hearings ordered in Docket No. E-6194 and Docket No. E-6212, as herein consolidated, be held commencing June 6, 1949, at 9:45 a.m. (EDST), in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C.

By the Commission.

. . . . . ,

Leon M. Fuquay, Secretary.

Date of Issuance: June 1, 1949.

## EXHIBIT J

Docket No. E-6194,
Arizona Edison Company, Inc.

May 12, 1950.

Arizona Edison Company, Inc.,
Post Office Box 2669,
331 North First Avenue,
Phoenix, Arizona.

Attention: Mr. F. W. Smith, Treasurer

Gentlemen:

A review of the Commission's files indicates that the proposed journal entries as required by paragraph D of the Commission's Order of March 29, 1950, Docket No. E-6194, with reference to purchase of electric plant facilities from California Electric Power Company, have not been received.

Proposed accounting entries relative to this acquisition were required to be filed with the Commission within thirty days from the date of said order. Inasmuch as this period has elapsed, it is requested that these entries be filed at once.

Very truly yours,

LEON M. FUQUAY,
Secretary.

Accts.
LBMRCR.ara
5/10/50

cc: Mr. Rainwater
Mr. Gates
Mr. Marchi

[Stamped]: Received May 11, 1950.

EXHIBIT K

June 9, 1950.

In the Matter of:
Arizona Edison Company, Inc.,
Docket No. E-6194.

Arizona Edison Company, Inc.,
331 North First Avenue,
Phoenix, Arizona.

Gentlemen:

In view of the informal discussions some of the members of the staff have had with your General Counsel, Frank L. Snell, when he was in Washington on behalf of Central Arizona Light and Power Company, I have deferred until now writing with respect to your Company's noncompliance with the Commission's order of March 29, 1950, in the above matter.

Your attention is directed to the fact that more than sixty days have elapsed since that order was entered and more than thirty days since the certified copies of journal entries referred to in Paragraph (D) of the order should have been filed. Furthermore you will note that less than thirty days remain for your completion and filing of your original cost and reclassification studies referred to in Paragraph (B).

According to our records you received a copy of that order on April 5, 1950 (Registry Return Receipt No. 443924), filed no application for rehearing and no petition for extension of time in which to comply, and did not file the certified copies of your journal entries.

I feel that it is appropriate to call these matters to your attention at this time and inquire whether you intend promptly to comply with the Commission's order or whether further action by the Commission will be necessary to secure compliance.

Very truly yours,

/s/ BRADFORD ROSS,
General Counsel.

LE—vc.
6/6/50.

cc: Bur. AF&R, Bur. Power.
Messrs. Ross, Wahrenbrock, Spalter, Easley.
Registered 443248.

Post Office Return Receipt

Name of Sender: Federal Power Commission.
Addressee: Arizona Edison Co.
Signature of Addressee's Agent: Robert C. McKenzie.
Registered Article No.: 443248.
Date of Delivery: June 13, 1950.

EXHIBIT L

Docket No. E-6194,
Arizona Edison Company, Inc.

Jul. 20, 1950.

Arizona Edison Company, Inc.,
331 North First Avenue,
Phoenix, Arizona.

Attention: Mr. Reid Gardner, President.

Gentlemen:

Reference is made to paragraph (B) of the Com-

mission's Order entered March 29, 1950, Docket No. E-6194, which required the company within 90 days from the date of the order to file original cost studies of electric plant in accordance with Electric Plant Accounts Instruction 2-D of the Uniform System of Accounts Prescribed for Public Utilities and Licensees and the Commission's Order of May 11, 1937.

The studies have not been received, and, accordingly, the company is requested to submit the required information immediately. In the event the studies have not been completed, the company should make application to the Commission for an extension of time in which to comply with the Commission's Order. Such application should clearly state the reasons for the delay in the company's compliance and set forth the present plan for completing the required studies.

Very truly yours,

J. H. GUTRIDE,
Acting Secretary.

WHB:RCR:ara
Accts.
7/17/50
cc: Mr. Rainwater
Mr. Brown

[In Margin]: Rec. 7/17/50.

[Initialed]: L.E. 7/19/50.
R.G. 7/19/50.
A.K.S. 7/19/50.
C.V. 7/18.

EXHIBIT M

Docket No. E-6194,
Arizona Edison Company, Inc.

July 27, 1950.

Arizona Edison Company, Inc.,
Post Office Box 2669,
331 North First Avenue,
Phoenix, Arizona.

Attention: Mr. F. W. Smith, Treasurer.

Gentlemen:

Reference is made to the Commission's letter of May 12, 1950, requesting proposed journal entries be filed as required by paragraph D of the Commission's Order of March 29, 1950, Docket No. E-6194, in connection with the purchase of electric plant facilities from California Electric Power Company.

As of this date, these accounting entries have not been received. Paragraph D of the above-mentioned order specifically states that the journal entries requested be submitted within thirty days from the date of said order. Inasmuch as this

period has elapsed, these entries should be filed without delay.

Very truly yours,

J. H. GUTRIDE,
Acting Secretary.

Accts.
LBM:RCR:lw
7/25/50.

cc: Mr. Rainwater.
Mr. Gates.
Mr. Marchi.

[Initialed]: R.A.G. 7/27/50.
W.S.

EXHIBIT N

Arizona Edison Company, Inc.,
331 North First Avenue,
Phoenix, Arizona.

Feb. 16, 1949.

Re: Arizona Edison Company, Inc.,
Docket No. E-6194.

Gentlemen:

Enclosed is the order entered by the Commission on February 15, 1949, in the above-entitled matter.

Very truly yours,

LEON M. FUQUAY,
Secretary.

Enclosure, Registered:
Staff Report.

Copy of order sent to:

California Electric Power Company, P. O. Box 512, Riverside, California.
Securities and Exchange Commission, 425 Second Street, N. W., Washington, D. C.

cc: Regional Office: San Francisco, California
Law; Publications; Power; AFR.

ES:en 2/16/49
443257

EXHIBIT O

Post Office Return Receipt

Name of Sender: Federal Power Commission.
Addressee: Arizona Edison Co.
Signature of Addressee's Agent: L. S. Beck
Registered Article No. 443257.
Date of Delivery: Feb. 21, 1949.

EXHIBIT P

Arizona Edison Company, Inc.,
331 North First Avenue,
Phoenix, Arizona.

Apr. 21, 1949.

Re: Arizona Edison Company, Inc.
Docket No. E-6194.

Dear Sir:

Enclosed is the order entered by the Commission on April 20, 1949, in the above-entitled matter.

Very truly yours,

LEON M. FUQUAY,
Secretary.

Enclosure
Registered.

Copy of order sent to:

Acme Reporting Co., 1748 Pennsylvania Avenue, N. W., Washington, D. C.

California Electric Power Co., P. O. Box 512, Riverside, California.

Frank L. Snell, Esq.; Messrs. Snell, Wilmer, Walsh, Melczer and Beauchamp, Heard Bldg., Phoenix, Arizona (for Arizona Edison).

Securities and Exchange Comm., 425 Second St., N. W., Washington, D. C.

Corp. Comm. of Arizona, Phoenix, Arizona.

Hon. Dan E. Garvey, Gov. of Arizona, Phoenix, Arizona.

Public Service Comm. of Nevada, Carson City, Nevada.
Hon. Vail Pittman, Gov. of Nevada, Carson City, Nevada.
Public Utilities Comm. of California, San Francisco 2, California.
Hon. Earl Warren, Gov. of California, Sacramento, California.

CC: Reg. Off. San Francisco
Law—Pubs.—AFR—Power

ES:dlp—4/20/49
443611

Docketed April 21, 1949.

## EXHIBIT Q

Post Office Return Receipt

Name of Sender: Federal Power Commission.
Addressee: Arizona Edison Co.
Signature of Addressee's Agent: H. Preisner.
Registered Article No.: 443611.
Date of Delivery: April 26, 1949.

EXHIBIT R

Arizona Edison Company, Inc.,
331 North First Avenue,
Phoenix, Arizona.

Re: Arizona Edison Company, Inc.
Docket No. E-6194.
Central Arizona Light and Power Company,
Docket No. E-6612.

Gentlemen:

Enclosed is the order entered by the Commission on June 1, 1949, in the above-entitled matters.

Very truly yours,

LEON M. FUQUAY,
Secretary.

Enclosure
Registered

Same letter sent Registered to:

Central Arizona Light and Power Company, Title and Trust Building, Phoenix, Arizona.

Copy of order sent to:

Acme Reporting Company, 1748 Pennsylvania Avenue, N. W., Washington, D. C.

California Electric Power Co., P. O. Box 512, Riverside, California.

Frank L. Snell, Esq.; Messrs. Snell, Wilmer, Walsh, Melczer and Beauchamp, Attys., Heard Building, Phoenix, Arizona (for appli.).

Securities and Exchange Comm., 425 Second St., N. W., Washington, D. C.

Salt River Valley Water Users Assoc., 2nd Ave. & Van Buren St., Phoenix, Arizona.
Arizona Power Co., 107 North Cortez St., Prescott, Arizona.
(2) Bureau of Reclamation.
Corp. Comm. of Arizona, Phoenix, Arizona.
Hon. Dan E. Garvey, Gov. of Arizona, Phoenix, Arizona.
Public Utilities Comm. of California, San Francisco, California.
Hon. Earl Warren, Gov. of California, Sacramento, California.
Public Service Comm. of Nevada, Carson City, Nevada.
Hon. Vail Pittman, Gov. of Nevada, Carson City, Nevada.
The Tucson Gas, Electric Light and Power Co., 81 North Stone Avenue, Tucson, Arizona.

CC: Reg. Off.: San Francisco
Law—Pubs.—AFR—Power—Orig. Cost.

ES:dlp—6/1/49
443464

Docketed June 1, 1949.

EXHIBIT S

Post Office Return Receipt

Name of Sender: Federal Power Commission.
Addressee: Arizona Edison Co.
Signature of Addressee's Agent: Jeane Ericson.
Registered Article No.: 443464.
Date of Delivery: June 6, 1949.

EXHIBIT T

Arizona Edison Company, Inc.,
331 North First Avenue,
Phoenix, Arizona.

Sept. 23, 1949.

Re: Arizona Edison Company, Inc.
Docket No. E-6194.
Central Arizona Light and Power Company,
Docket No. E-6212.

Gentlemen:

There is enclosed, pursuant to Rule 30 of the Commission's Rules of Practice and Procedure, the Presiding Examiner's Decision in the above-entitled matter.

Very truly yours,

LEON M. FUQUAY,
Secretary.

Enclosure
Registered

Same letter sent to: (Registered)

Central Arizona Light and Power Company, Title & Trust Bldg., Phoenix, Arizona.

Same letter delivered to:

Leonard D. Easley, Esq., Federal Power Commission, Washington, D. C.

Abraham R. Spalter, Esq., Federal Power Commission, Washington, D. C.

Received the above Decision:

/s/ LEONARD D. EASLEY,

Date.....

/s/ ABRAHAM R. SPALTER,

Date.....

Copy of Decision sent to:

Salt River Valley Water Users Association, 2nd Avenue & Van Buren Street, Phoenix, Arizona.

Securities and Exchange Commission, 425 - 2nd St., N. W., Washington, D. C.

Arizona Power Company, 107 North Cortez Street, Prescott, Arizona.

Arizona Corporation Commission, Phoenix, Arizona.

Public Utilities Commission of California, San Francisco, California.

Public Service Commission of Nevada, Carson City, Nevada.

(2) Bureau of Reclamation.

The Tucson Gas, Electric Light & Power Co., 81 N. Stone Ave., Tucson, Arizona.

Frank L. Snell, Esq., Heard Bldg., Phoenix, Arizona (Central Arizona).

California Electric Power Company, P. O. B. 512, Riverside, California.

Harry A. Poth Jr., Esq., Reid & Priest, 1518 K St., N. W., Washington, D. C.

cc: Regional Office—San Francisco, Law, Publications, AFR, Power, Original Cost 1—Chief Examiner 2—Secretary.

443879

Docketed September 23, 1949.

EXHIBIT U

Post Office Return Receipt

Name of Sender: Federal Power Commission.
Addressee: Arizona Edison Co.
Name of Addressee's Agent: Robert C. McKenzie.
Registered Article No.: 443879.
Date of Delivery: Sept. 27, 1949.

EXHIBIT V

Certificate of Service

I hereby certify that I have today served the foregoing "Exceptions of Commission's Staff to Decision of Presiding Examiner" by mailing a copy thereof properly addressed to each of the companies and persons listed below.

/s/ ABRAHAM R. SPALTER.

Central Arizona Light and Power Company, Title and Trust Building, Phoenix, Arizona.

Arizona Edison Company, Inc., 331 North First Avenue, Phoenix, Arizona.

Snell, Wilmer, Walsh, Melczer & Beauchamp, Heard Building, Phoenix, Arizona.

Washington, D. C., October 12, 1949.

EXHIBIT W

Arizona Edison Company, Inc.,
331 North First Avenue,
Phoenix, Arizona.

Mar. 31, 1950.

Re: Arizona Edison Company, Inc.
Docket No. E-6194.
Central Arizona Light and Power Company,
Docket No. E-6212.

Gentlemen:

Enclosed is a copy of Opinion No. 190 and order entered by the Commission on March 29, 1950, in the above-entitled matters.

Very truly yours,

LEON M. FUQUAY,
Secretary.

Enclosure

Same letter sent Registered to:

Central Arizona Lt. and Pwr. Co., Title and Trust Bldg., Phoenix, Arizona.

Frank L. Snell, Esq.; Messrs. Snell, Wilmer, Walsh, Melczer & Beauchamp, Heard Bldg., Phoenix, Arizona (Cent. Arizona Lt. & Pwr.).

Copy of Opinion and Order sent to:

California Elec. Pwr. Co., P. O. Box 512, Riverside, California.

The Tucson Gas, Elec. Lt. & Pwr. Co., 81 North Stone Ave., Tucson, Arizona.

Corp. Comm. of Arizona, Phoenix, Arizona.

Pub. Serv. Comm. of Nevada, Carson City, Nevada.

Pub. Utils. Comm. of California, San Francisco 2, California.

Securities and Exchange Comm., 425 - 2nd St., N. W., Washington, D. C.

Harry A. Poth, Jr.; Messrs. Reid and Priest, 1518 K St., N. W., Washington, D. C.

Salt River Valley Wtr. Users Assn., 2nd Ave. & Van Buren St., Phoenix, Ariz.

Arizona Pwr. Co., 107 North Cortez St., Prescott, Arizona.

(2) Bureau of Reclamation.

cc: Reg. Off.: San Francisco—Law—Pubs.—AFR—Power—Original Cost.

ES:ng—3/30/50
Registered: 443924
443925
443926

## EXHIBIT X

Post Office Return Receipt

Name of Sender: Federal Power Commission.
Addressee: Arizona Edison Co.
Name of Addressee's Agent: Robert C. McKenzie.
Registered Article No.: 443924.
Date of Delivery: April 5, 1950.

[Endorsed]: Filed August 31, 1950.

[Title of District Court and Cause.]

## MOTION TO DISMISS COMPLAINT

Comes now Defendant, Arizona Edison Company, Inc., and makes application to the Court for an order dismissing the Complaint herein and other relief; and as grounds for its said application respectfully represents to the Court:

I.

Said Complaint does not allege facts which state any claim or claims upon which Plaintiff, Federal Power Commission, is entitled to relief or upon which relief can be granted.

II.

It appears affirmatively on the face of the Complaint that the Plaintiff Commission at all times in said Complaint mentioned lacked and now lacks jurisdiction over the subject matter with respect to which a decree of enforcement by this Court is sought in this action.

III.

It appears affirmatively on the face of the Complaint that the Plaintiff Commission has imposed sanctions upon Defendant and issued substantive rules and orders of command against Defendant in excess of jurisdiction delegated to said Commission and authorized by law in that Defendant does not own or operate any facilities for transmission of electric energy in interstate commerce; that all facilities owned or operated by Defendant for the

transportation of electric energy are situate within the State of Arizona; that said Defendant Company, an Arizona corporation, even as set forth in the Order and Opinion of Plaintiff (Exhibit A), is engaged solely in the State of Arizona in the business of transmitting electric energy, and distributing and selling it at retail to supply ultimate consumers served by it in its various systems scattered locally through Central and Southern Arizona; that all facilities owned or operated by Defendant referred to in said Complaint are facilities used in local distribution or only for the transmission of electric energy in intrastate commerce; and that all the matters which the Plaintiff Commission seeks to regulate by its said Order and Opinion (Exhibit A attached to Complaint) are subject to and now regulated by the State of Arizona.

IV.

It appears affirmatively on the face of the Complaint that the Plaintiff Commission at all times in said Complaint mentioned lacked and now lacks jurisdiction over the person of Defendant, Arizona Edison Company, Inc., in and with respect to any and all Commission proceedings specifically referred to in said Complaint, including the Commission Order and Opinion No. 190 which is a part hereof and enforcement of which herein is sought.

V.

It appears affirmatively on the face of the Complaint that the Plaintiff Commission at all times

in said Complaint mentioned lacked and now lacks any authority or power whatever under law: to initiate the purported jurisdictional proceedings of February 16, 1949, entitled "Order to Show Cause" (Exhibit B, attached to Complaint); to make the purported service thereof upon Defendant (Exhibit O, attached to Complaint); to issue or make the purported service upon Defendant of any of the orders and other documents referred to in Paragraph 16 of the Complaint (Exhibits Q, S, U and X, attached to said Complaint); or to make, enter and promulgate the said "Commission Order, and Opinion No. 190," which is a part thereby (Exhibit A, attached to Complaint).

Wherefore, Defendant prays that an order be entered dismissing the Complaint of Plaintiff, that Plaintiff take nothing by its said Complaint, and for such other and further relief as to the Court may seem proper in the premises.

SNELL & WILMER,

By /s/ JAMES A. WALSH,
Attorneys for Defendant.

LEE, SHAW & McCREERY,

By /s/ DONALD McCREERY,
Of Counsel.

## MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

1. The Plaintiff Commission, in judicial enforcement proceedings, must establish its authority and jurisdiction to issue the order sought to be enforced.

Federal Power Commission vs. Panhandle Eastern Pipe Line Co., 172 F. 2d 57, 60 (C.C.A. 3, 1949).

Federal Power Commission vs. Panhandle Eastern Pipe Line Co., 337 U.S. 498, 515 (1949); 93 L. Ed. 1499, 1510; 69 S. Ct. 1251.

Jaeger vs. Simrany, 180 F. 2d 650, 653 (C.C.A. 9, 1950).

Federal Power Commission vs. Metropolitan Edison Co., 304 U.S. 375, 386 (1938); 82 L. Ed. 1408, 1415.

East Ohio Gas Co. vs. Federal Power Commission, 115 F. 2d 385, 387 (C.C.A. 6, 1940).

United Gas Pipe Line Co. vs. Federal Power Commission, 181 F. 2d 796, 800 (C.A.D.C., 1950).

2. The powers of the Plaintiff Commission are limited and circumscribed by the terms of the Federal Power Act.

Stark vs. Wickard, 321 U.S. 288, 309, 310 (1944); 88 L. Ed. 733, 747, 748; 64 S. Ct. 559, 571.

Jaeger vs. Simrany, 180 F. 2d 650, 653 (C.C.A. 9, 1950).

3. The Plaintiff Commission cannot enlarge its powers by the adoption of rules and regulations.

Jaeger vs. Simrany, 180 F. 2d 650, 652 (C.C.A. 9, 1950).

L. & N. R. Co. vs. U. S., 282 U.S. 740, 758, 759 (1931); 75 L. Ed. 672, 684; 51 S. Ct. 297, 304.

Jones vs. Securities and Exchange Commission, 298 U.S. 1, 18, 19 (1936); 80 L. Ed. 1015, 1022; 56 S. Ct. 654.

4. The Plaintiff Commission cannot assume power and authority not delegated to it by law under the guise of statutory construction or assertion of alleged Congressional intent.

National Labor R. Bd. vs. Continental Oil Co., 179 F. 2d 553, 555 (C.C.A. 10, 1950).

Jaeger vs. Simrany, 180 F. 2d 650, 653 (C.C.A. 9, 1950).

Western Union Telegraph Co. vs. Lenroot, 323 U.S. 490, 508, 509 (1945); 89 L. Ed. 414, 426, 427.

United States vs. Youngstown Sheet & Tube Co., 171 F. 2d 103, 110, 111 (C.C.A. 6, 1948).

5. The Plaintiff Commission in the proceedings had by it culminating in its Opinion and Order No. 190 was without jurisdiction over the person of Defendant under the terms of the Federal Power Act. All of such proceedings and procedures di-

rected against Defendant, as described in the Complaint, were in excess of the authority delegated to the Plaintiff Commission or authorized by law.

Federal Power Act, Sections 1, 201, et seq. (Title 16, U.S.C.A., Ch. 12, Secs. 792, 824, et seq.).

Administrative Procedure Act (Title 5, U.S. C.A., Ch. 19, Secs. 1001, et seq.).

6. The Plaintiff Commission at all times mentioned in the Complaint was, and now is, without power, authority or jurisdiction of or over the subject matter, to wit, the facilities of Defendant or Defendant as the owner or operator thereof.

Connecticut Light & P. Co. vs. Federal Power Commission, 324 U.S. 515 (1945); 89 L. Ed. 1150; 65 S. Ct. 749.

Federal Power Act. Sec. 201 (Title 16, U.S. C.A., Ch. 12, Sec. 824).

Administrative Procedure Act. Sec. 9(a) (Title 5, U.S.C.A., Ch. 19, Sec. 1008(a)).

Georgia Power Co. vs. T.V.A., 14 F. Supp. 673 (D.C.Ga., 1936).

Respectfully submitted,

SNELL & WILMER,

By /s/ JAMES A. WALSH,

Attorneys for Defendant.

LEE, SHAW & McCREERY,

By /s/ DONALD S. McCREERY,

Of Counsel.

[Endorsed]: Filed September 19, 1950.

[Title of District Court and Cause.]

## MOTION FOR SUMMARY JUDGMENT

The Plaintiff, Federal Power Commission, moves the Court for summary judgment herein, for the following reasons, as more fully set forth in its memorandum of authorities filed herewith:

1. There is no genuine issue as to any material fact set forth in the Complaint herein and on those facts Plaintiff, as a matter of law, is entitled to a judgment as prayed for in the Complaint.

2. The contentions advanced by the Defendant in its Motion to Dismiss constitute an attempt to obtain a re-examination of matters lawfully determined by the Commission, which may not be had in this proceeding.

3. This Court has no jurisdiction to review the Plaintiff's order of March 31, 1950, entered after due notice to the Defendant and to the public and after public hearing, finding the Defendant to be a "public utility" within the meaning of that term as used in the Federal Power Act (16 U.S.C. §791a, et seq.) and directing the Defendant to take the actions referred to in paragraph 14 of the Complaint herein. The validity of that order of March 31, 1950, was properly reviewable exclusively in the manner provided in Section 313 of the Federal Power Act (16 U.S.C. §8251).

Wherefore, Plaintiff prays for judgment and an order and decree as prayed in its Complaint.

/s/ BRADFORD ROSS,
General Counsel;

/s/ HOWARD E.
WAHRENBROCK,
Assistant General Counsel;

/s/ REUBEN GOLDBERG,
Attorney;

/s/ ABRAHAM R. SPALTER,
Attorney,
Counsel for Plaintiff.

Of Counsel:

THEODORE FRENCH.

October, 1950.

Certificate of Service

I have this day served the attached Motion for Summary Judgment upon the Defendant, Arizona Edison Company, Inc., by mailing copies thereof to James A. Walsh, Esq., of Snell & Wilmer, 703 Heard Building, Phoenix, Arizona, and to Donald McCreery, Esq., of Lee, Shaw & McCreery, 1217 First National Bank Building, Denver, Colorado, its attorneys of record.

October 5, 1950, Washington, D. C.

/s/ BRADFORD ROSS,
Counsel for Plaintiff.

[Endorsed]: Filed October 7, 1950.

[Title of District Court and Cause.]

## AFFIDAVIT OF HOWARD E. WAHRENBROCK

State of Arizona,
County of Maricopa—ss.

Howard E. Wahrenbrock, being duly sworn, on oath deposes and says that he is Assistant General Counsel of the Federal Power Commission; that he, or an attorney working under his immediate and direct supervision, has compared the documents which are appended as Exhibits A through Exhibit X to the complaint, with originals thereof appearing in the official files of the Commission, and that in every instance has found that they are true and correct copies, except in one particular: The originals have the signatures as indicated on each of the following pages: p. 24, Exhibit A; p. 31, Exhibit A; p. 42, Exhibit H; p. 43, Exhibit I;

That he is familiar with the mailing and filing procedures of the Federal Power Commission and that the presence of the aforesaid documents in the Commission's files means that the orders, of which copies are set forth, were duly adopted and issued, the letters signed by the Commission's Secretary, Acting Secretary, and General Counsel, of which copies are shown, were duly mailed to the addresses shown on the dates shown thereon, but without the dictator's and other initials thereon, and statements of distribution of copies; that the return registry receipts pertain to the letters bearing the corre-

sponding identifying serial numbers; that the certificate of service (p. 57) was duly executed; and that the letter addressed to the Commission (p. 36) was duly received on the date shown.

/s/ HOWARD E.
WAHRENBROCK.

Subscribed and sworn to before me this 9th day of November, 1950.

[Seal] /s/ AURELIA E. HULL,
Notary Public.

My commission expires 6-22-52.

Receipt of copy acknowledged.
[Endorsed]: Filed November 9, 1950.

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In the United States District Court
for the District of Arizona

MINUTE ENTRY OF JANUARY 19, 1951
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, Presiding.

[Title of Cause.]

Plaintiff's Motion for Summary Judgment and Defendant's Motion to Dismiss having been argued, submitted and by the Court taken under advisement,

It Is Ordered that said Plaintiff's Motion for Summary Judgment be and it is denied and that said Defendant's Motion to Dismiss be and it is granted.

Entered in Civil Docket January 19, 1951.

Federal Power Commission
Washington 25

March 2, 1951.

James A. Walsh. Esq.,
703 Heard Building,
Phoenix, Arizona.

Donald S. McCreery, Esq.,
1217 First National Bank Building,
Denver, Colorado.

Re: Civ-1528 Phx., Federal Power Commission v. Arizona Edison Company, Inc.

Gentlemen:

The Court having granted your motion to dismiss our complaint and having denied our motion for summary judgment, we shall stand on our complaint. Accordingly, we shall be glad to review the draft of judgment you prepare, for approval as to form, in accordance with the Court's Rule No. 22. We would like to do this and take all the steps necessary to perfect our appeal at an early date.

Very truly yours,

/s/ BRADFORD ROSS,
General Counsel.

cc: Clerk of the United States District Court for District of Arizona.

[Stamped]: March 6, 1951.

In the United States District Court
for the District of Arizona

Civ. 1528 Phx.

FEDERAL POWER COMMISSION,
Plaintiff,

vs.

ARIZONA EDISON COMPANY, INC.,
Defendant.

## JUDGMENT OF DISMISSAL

This matter coming on for entry of final judgment pursuant to order of the Court January 19, 1951, denying plaintiff's motion for summary judgment and granting defendant's motion to dismiss, and

It appearing to the Court and the Court finds that plaintiff Commission has filed with the Clerk of this Court its election to stand upon its complaint, evidenced by Commission letter of date March 2, 1951, to said Clerk; and the Court now being sufficiently and fully advised in the premises:

It Is Ordered, Adjudged and Decreed that plaintiff's complaint and this proceeding be and the same hereby are dismissed with prejudice.

Done in Open Court this 2nd day of April, 1951.

/s/ DAVE W. LING,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed and docketed April 2, 1951.

[Title of District Court and Cause.]

## NOTICE OF APPEAL

Notice is hereby given that the Federal Power Commission, plaintiff-appellant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment of Dismissal of this Court entered in this action on April 2, 1951, granting the Motion to Dismiss filed by Arizona Edison Company, Inc., defendant-appellee above named, and denying the Motion for Summary Judgment filed by the plaintiff-appellant in the above-entitled case.

/s/ BRADFORD ROSS,
General Counsel, Federal Power Commission, Washington 25, D. C., Counsel for Appellant Federal Power Commission.

[Endorsed]: Filed April 23, 1951.

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[Title of District Court and Cause.]

## CLERK'S CERTIFICATE TO RECORD ON APPEAL

United States of America,
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of

Federal Power Commission, Plaintiff, vs. Arizona Edison Company, Inc., Defendant, numbered Civ-1528 Phoenix, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the minute entries are true and correct copies of the originals thereof remaining in my office in the city of Phoenix, State and District aforesaid.

I further certify that said original documents, and said copies of the minute entries, constitute the entire record on appeal in said case, as designated in the Appellant's Designation filed therein and made a part of the record attached hereto, and the same are as follows, to wit:

1. Plaintiff's Complaint and exhibits thereto, filed August 31, 1950.

2. Praecipe for Summons, filed August 31, 1950.

3. Summons and Marshal's Return, filed September 14, 1950.

4. Defendant's Motion to Dismiss, filed September 19, 1950.

5. Plaintiff's Motion for Summary Judgment, filed October 7, 1950.

6. Affidavit of Counsel for Plaintiff, filed November 9, 1950.

7. Minute entry of January 19, 1951 — Order

denying plaintiff's Motion for Summary Judgment and granting Defendant's Motion to Dismiss.

8. Copy of letter from Counsel for Plaintiff to Counsel for Defendant indicating election to stand on complaint, dated March 2, 1951.

9. Plaintiff's Notice of Appeal from Order of January 19, 1951, filed March 19, 1951.

10. Judgment of Dismissal, entered, filed and docketed April 2, 1951.

11. Plaintiff's Notice of Appeal from Judgment of Dismissal, filed April 23, 1951.

12. Minute entry of April 26, 1951—order extending time for filing record on appeal and docketing appeal to and including June 17, 1951.

13. Plaintiff's Designation of Contents of Record on Appeal, filed April 30, 1951.

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of $4.80 and that a memorandum of said sum has been entered in the civil docket as a constructive earning for services performed on behalf of the United States.

Witness my hand and the seal of said Court this 17th day of May, 1951.

[Seal] /s/ WM. H. LOVELESS,
Clerk.

[Endorsed]: No. 12941. United States Court of Appeals for the Ninth Circuit. Federal Power Commission, Appellant, vs. Arizona Edison Company, Inc., Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed May 19, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12941

FEDERAL POWER COMMISSION,
Appellant,

vs.

ARIZONA EDISON COMPANY, INC.,
Appellee.

## STATEMENT OF POINTS

1. The District Court had jurisdiction, under Section 317 of the Federal Power Act (16 U.S.C., § 825p), over violations of that Act and of rules, regulations, and orders thereunder and over an action brought to enforce duties created by, and to enjoin violations of, that Act and rules, regulations, and orders thereunder.

2. An action to enforce such duties and enjoin such violations was authorized by Section 317 of that Act to be brought by Appellant, Federal Power Commission, in the United States District Court for the District of Arizona against Appellee, Arizona Edison Company, Inc., as an inhabitant of that District.

3. An action would lie under that Act, and particularly under Section 314 thereof (16 U.S.C. § 825m), to enjoin a practice of failing and refusing to comply with that Act and with rules, regulations and orders thereunder, and to enforce compliance

with that Act and with such rules, regulations and orders.

4. The Complaint stated a cause of action under that Act, and, in particular, under Section 314 thereof.

5. The proceeding before the Appellant, Federal Power Commission, in which the order of March 31, 1950, was entered, as alleged in the Complaint, was such a proceeding as that Commission was authorized to conduct under the Federal Power Act, and in particular under Sections 203, 301, and 309, thereof (16 U.S.C. § 824b, 825, and 825h). That proceeding was one particularly authorized——

a. Insofar as it was a proceeding to determine that a particular electric utility company, such as Appellee, Arizona Edison Company, Inc., is a "public utility" within the meaning of the Federal Power Act, and, in particular, Section 201 thereof (16 U.S.C. §824), and that it is subject to the requirements applicable to "public utilities" in such Act and in rules, regulations and orders thereunder;

b. Insofar as it was a proceeding to require such a "public utility" to comply with previously formulated mandatory orders, rules and regulations addressed generally to all such "public utility" to comply with previously formulated mandatory orders, rules and regulations addressed generally to all such "public utilities"; and

c. Insofar as it was a proceeding to deter-

mine the accounts in which particular outlays shall be entered or charged by such a "public utility."

6. It was unnecessary, in order to state a cause of action, that the Complaint allege the findings made by the Commission in its order of March 31, 1950, and the legal sufficiency of those findings to support that order is not reviewable by the District Court and may not be brought in issue before that Court in a proceeding to enforce that order; being exclusively reviewable in proceedings brought in United States Courts of Appeals as provided in Section 313 of the Federal Power Act (16 U.S.C. § 825L); or, if such allegation was necessary, those findings, as alleged, were legally sufficient, and specifically——

a. The findings of fact in paragraphs (1) and (3) to (13), inclusive, of the Commission's order of March 31, 1950, and as further set forth in the Commission's Opinion No. 190 (incorporated by reference and made a part of the order) under the headings "Facilities and Operations, Arizona Edison," and "Discussion," are legally sufficient under the Federal Power Act, and, in particular, under Section 201 thereof (16 U.S.C. § 824), to support the conclusions in paragraph (14) of the order that Appellee, Arizona Edison Company, Inc., owns and operates facilities subject to the jurisdiction of the Commission and is therefore a "public utility" within the meaning, and subject to the requirements, of the Act and the

rules, regulations, and orders thereunder addressed generally to all "public utilities"; also legally sufficient to support the provisions of paragraphs (A) and (B) of the order insofar as they pertain to Appellee, Arizona Edison Company, Inc.

b. The findings of fact in paragraph (29) of the order are legally sufficient under the Federal Power Act, and, in particular, under Section 201 thereof (16 U.S.C. § 824), to support the conclusion in that paragraph that Appellee, Arizona Edison Company, Inc., was and had been such a "public utility" since prior to its acquisition of facilities from California Electric Power Company on April 1, 1948.

c. The findings of fact in paragraphs (25) to (28), inclusive, and (30), of the order of March 31, 1950, and as further set forth in Opinion No. 190 under the headings "Background of Proceedings, Arizona Edison," and "Discussion" (last three paragraphs), are legally sufficient under the Federal Power Act, and, in particular, under Sections 203, 301, and 309 thereof (16 U.S.C. §§824b, 825, and 825h), to support the conclusions in paragraph (30) and the requirements (C) and (D) of the order, with respect to the accounting treatment of the amounts there referred to.

7. The question whether the facts support such an order is not determinable by the District Court as if presented for its decision initially.

8. All applicable statutory and constitutional requirements were fully satisfied by the notice accorded to Appellee, Arizona Edison Company, Inc., as alleged in the Complaint, with respect to: the initiation of the Commission proceeding in which the order of March 31, 1950, was entered, the setting of the hearing in that proceeding, the time and the place of such hearing, the consolidation of proceedings for purposes of that hearing, the Trial Examiner's Decision, the Commission staff counsel's exceptions to the Trial Examiner's Decision, and the Opinion, Findings and Order of the Commission.

9. It was unnecessary, in order to state a cause of action, that the Complaint allege that opportunity to be heard, with respect to the order of March 31, 1950, had been accorded Appellee, Arizona Edison Company, Inc., and the legal sufficiency of the opportunity to be heard accorded Appellee is not reviewable by the District Court and may not be brought in issue before that Court in a proceeding to enforce that order, being exclusively reviewable in proceedings brought in United States Courts of Appeals as provided in Section 313 of the Federal Power Act (16 U.S.C. § 825L); or, if such allegation was necessary, the opportunity alleged in the Complaint fully satisfied all applicable statutory and constitutional requirements.

10. It was unnecessary, in order to state a cause of action, that the Complaint allege facts from which the District Court could find that Appellee is a "public utility" under the Federal Power Act.

11. It was unnecessary, in order to state a cause of action, that the Complaint allege the evidence before the Commission supporting the findings and order of the Commission, and the factual sufficiency of that evidence could not be brought into issue in a proceeding to enforce the order, being exclusively reviewable in proceedings brought in United States Courts of Appeals as provided in Section 313 of the Federal Power Act (16 U.S.C. § 825L).

12. The Appellee's failure and refusal to comply with the order of March 31, 1950, its acts and practices constituting violations of that order, and the continuance of such acts and practices unless enjoined, all as alleged in the Complaint, are sufficient to entitle Appellant, Federal Power Commission, to a Court order as prayed for in the Complaint, directing compliance with the Appellant's order of March 31, 1950, and enjoining continuation of Appellee's violation thereof.

13. There was no genuine issue as to any material fact alleged in the Complaint, all such facts being matters of official record with the Appellant, Federal Power Commission, as established before the District Court by uncontroverted affidavit.

14. Appellee's motion to dismiss should have been denied.

15. Appellant's motion for summary judgment should have been granted.

16. The Complaint and proceeding should not have been dismissed.

17. The relief prayed for in the Complaint should have been granted.

18. This Court should reverse the granting of the motion to dismiss, the denial of Appellant's motion for summary judgment, and the dismissal, "with prejudice," of the Complaint and the proceedings, and should direct the District Court to grant the relief prayed for in the Complaint.

/s/ BRADFORD ROSS,
General Counsel,

/s/ HOWARD E. WAHRENBROCK,
Assistant General Counsel,

/s/ LEONARD EASLEY,
Attorney,

/s/ ABRAHAM R. SPALTER,
Attorney,
Counsel for Appellant,
Federal Power Commission.

Certificate of service attached.

[Endorsed]: Filed June 4, 1951.